

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB TPS 16-01 Department of Transportation

**SPONSOR(S):** Transportation & Ports Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Ports Subcommittee	12 Y, 0 N	Willson	Vickers

### SUMMARY ANALYSIS

This is a comprehensive bill relating to the Department of Transportation (DOT). In summary the bill:

- Reallocates \$10 million within the Work Program to the Florida Seaport and Economic Development (FSTED) Program, which increases the program's annual funding minimum from \$15 to \$25 million.
- Authorizes DOT to designate certain locations and routes as ports of entry, and limits the penalty that may be assessed for specified operators which obtain temporary permits at a port of entry.
- Authorizes the DOT to assume specified environmental review responsibilities under the National Environmental Policy Act (NEPA) with respect to highway projects.
- Modifies the process for the development and review of public-private partnership project proposals.
- Authorizes DOT to establish a Business Development Program that would assist small businesses and increase competition in the procurement of highway project contractors.
- Removes the Beeline-East Expressway and the Navarre Bridge from the list of facilities whose toll revenues may be used to secure bonds.
- Authorizes the creation of the DOT Financing Corporation to serve as a conduit issuer of debt to finance transportation projects.
- Increases the length of time that a toll account must remain dormant before it is presumed unclaimed property.
- Revises requirements for when a DOT Work Program amendment must be approved by the Legislative Budget Commission.

The overall fiscal impact of this bill is indeterminate but likely insignificant. Additionally, there also may be cost savings associated with DOT assuming responsibilities under NEPA. See fiscal section for specific details.

The bill has an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

This is a comprehensive bill relating to the Department of Transportation (DOT). For ease of understanding, this analysis is arranged by topic.

#### **FSTED Funding (Sections 1 and 2)**

##### Current Situation

In 1990, the Legislature created Ch. 311, F.S., authorizing the Florida Seaport and Economic Development (FSTED) Program.<sup>1</sup> This program established a collaborative relationship between DOT and the seaports and currently codifies an annual minimum of \$15 million for a seaport grant program.<sup>2</sup> FSTED funds are to be used on approved projects on a 50-50 matching basis.<sup>3</sup> Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port.
- The dredging or deepening of channels, turning basins, or harbors.
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing.
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for port purposes.
- The acquisition, improvement, enlargement, or extension of existing port facilities.
- Environmental protection projects: which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites; or which result from the funding of eligible projects.
- Transportation facilities which are not otherwise part of DOT's adopted Work Program.<sup>4</sup>
- Intermodal access projects.
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in s. 311.09(1), F.S.,<sup>5</sup> with operating revenues of \$5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports.
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.<sup>6</sup>

In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

The FSTED program is managed by the FSTED Council, which consists of the port director, or director's designee of the 15 deepwater ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.<sup>7</sup>

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<sup>1</sup> Ch. 90-136, L.O.F.

<sup>2</sup> SS. 311.07 and 311.09, F.S.

<sup>3</sup> S. 311.07(3)(a), F.S.

<sup>4</sup> DOT's Work Program is adopted pursuant to s. 339.135, F.S.

<sup>5</sup> The ports listed in s. 311.09(1), F.S., are the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

<sup>6</sup> Part II of Ch. 163, F.S.

<sup>7</sup> S. 311.09(1), F.S.

### Proposed Changes

The bill amends ss. 311.07(2) and 311.09(9), F.S., providing that DOT include a minimum of \$25 million per year in its annual legislative budget request for the FSTED program.

### Port of Entry (Sections 3 and 4)

#### Current Situation

The Federal Motor Carrier Safety Administration and the state have enacted certain laws and regulations intended to promote the safe operation of commercial vehicles and to protect the state's roads and bridges from damage associated with overweight vehicles. DOT's Office of Maintenance's Motor Carrier Size and Weight Office as well as the Florida Highway Patrol's Commercial Vehicle Enforcement Unit enforce laws relating to commercial vehicle size, weight, and safety.<sup>8</sup>

Interstate operators of commercial motor vehicles are required to obtain a number of credentials. The basic credential requirements include a valid and current apportioned registration (International Registration Plan [IRP]),<sup>9</sup> international fuel tax agreement (IFTA) license and decals, display of a valid United States Department of Transportation number, and, in some situations, overweight/over dimensional permits.

A "port of entry" or "POE" state allows carriers to purchase all or portions of these credentials at select weigh station facilities or other locations within the state. Currently, Florida is not a port of entry state, meaning that all applicable permits and credentials must be obtained prior to entering the state.

Section 320.0715(1), F.S., requires all apportionable vehicles<sup>10</sup> domiciled in this state to register under the International Registration Plan and to display the apportioned license plate. A CVM that is not registered with Florida or for Florida with any other IRP jurisdiction, or the registration is found to be expired, or the vehicle is improperly registered, Florida law requires a penalty assessment of five cents per pound for all weight over 10,000 pounds, except loaded truck tractor-semitrailer and tandem trailer combinations, which will be assessed for all weight over 35,000 pounds.

An IRP trip permit registration may be obtained for a commercial motor vehicle that was eligible for, but failed to obtain, IRP credentials prior to entering Florida.<sup>11</sup> The trip permit allows the vehicle to be operated in interstate or intrastate commerce for a ten-day period and may be obtained at a weigh station for \$30.<sup>12</sup> Under current law, a weight penalty is assessed for an improperly registered commercial motor vehicle without regard to location or whether the operator of the commercial motor vehicle obtains a temporary IRP trip permit registration.<sup>13</sup> When the registered declared gross vehicle weight of a properly credentialed commercial motor vehicle is exceeded, a penalty of five cents per pound will be assessed for all weight over the registered gross vehicle weight.<sup>14</sup>

### Proposed Changes

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<sup>8</sup> Florida Department of Transportation, *Florida Port of Entry Feasibility Study*, September 2014, at 27, available at [http://www.dot.state.fl.us/trafficoperations/Traf\\_Incident/Projects\\_CVO/Presentation/FL%20POE%20Technical%20Study%20Final.pdf](http://www.dot.state.fl.us/trafficoperations/Traf_Incident/Projects_CVO/Presentation/FL%20POE%20Technical%20Study%20Final.pdf) (last accessed Nov. 18, 2015).

<sup>9</sup> The IRP is a registration reciprocity agreement among states of the United States, the District of Columbia and provinces of Canada providing for payment of apportionable fees on the basis of total distance operated in all jurisdictions. <http://www.irponline.org/> (Last visited February 12, 2015).

<sup>10</sup> Section 320.01(24), F.S., defines "apportionable vehicle" to mean "any vehicle [with certain exceptions] which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and: (a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds; (b) Is a power unit having three or more axles, regardless of weight; or (c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight."

<sup>11</sup> S. 320.0715(2)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> S. 316.545(2)(b), F.S.

<sup>14</sup> *Id.*

The bill creates s. 316.003(94), F.S., defining “port-of-entry” as a designated location that allows drivers of commercial motor vehicles to purchase temporary registration permits necessary to operate legally within the state. The locations and the designated routes to such locations shall be determined by DOT.

The bill amends s. 316.545(2)(b), F.S., providing that commercial motor vehicles entering the state at designated ports-of-entry, or operating on designated routes to a port of entry location, which obtain temporary registration permits associated with the IRP, shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight<sup>15</sup> at five cents per pound. Existing penalties for failure to obtain other required credentials remain unchanged, including, but not limited to, IFTA violations and overweight and over-dimensional permit violations.

The FDOT advises three potential POE locations are under consideration:

- I-10 at the first eastbound weigh station entering the state;
- I-75 at the first southbound weigh station entering the state; and
- I-95 at the first southbound weigh station entering the state.

The designated route for each location would be the portion of the interstate from the state line to the weigh station.<sup>16</sup>

## **NEPA Delegation (Section 5)**

### **Current Situation**

The DOT funds, develops and constructs highway transportation projects through several funding sources including federal, state, local, toll or combination thereof. When DOT advances a highway project as “federally eligible,” the project is developed consistent with the National Environmental Policy Act (NEPA) and other laws and regulations in consultation with and subject to the oversight of the Federal Highway Administration (FHWA) of the United States Department of Transportation (USDOT). DOT meets NEPA requirements through its Efficient Transportation Decision Making (ETDM) and Project Development and Environment (PD&E) processes.

DOT uses the ETDM process to initiate contact with agencies and other stakeholders during the planning phase of a project to provide the opportunity for input by multiple parties and garner information that can be used to inform the PD&E process. The PD&E process is DOT’s procedure for analyzing, performing outreach, guiding agency coordination and meeting regulatory requirements before a project can be advanced. The two processes have been working in concert since 2005 and PD&E has been in place for over 20 years. Under this process DOT prepares documents, analyzes alternatives, consults with agencies, makes recommendations and provides this information to the FHWA as the lead federal agency for review, comment, approval and ultimate decision making.

Under this federally assisted, state administered process DOT is responsible for providing all supporting work and effort to advance DOT projects but has limited autonomy and authority to make ultimate project decisions. The result is that DOT must perform its analysis, coordinate and consult with agencies and ultimately satisfy FHWA. The additional layer of coordination, review and satisfaction of FHWA can add considerable time and cost to project development and delivery.

From a legal standpoint, the FHWA provides legal sufficiency reviews of project documents developed by DOT and is tasked with addressing court challenges of projects. These challenges are based on the federal Administrative Procedures Act and therefore focus on the administrative record and the prepared documentation and related analysis. DOT is typically a party to these challenges to support FHWA and ensure its project advancement.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law in August of 2005. Under SAFETEA-LU a five-state pilot program was

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<sup>15</sup> S. 322.01(13), F.S., defines “Declared weight” as the maximum loaded weight declared for purposes of registration, pursuant to chapter 320.

<sup>16</sup> Copy on file with the House Transportation & Ports Subcommittee.

established authorizing the pilot states to assume the USDOT Secretary's environmental responsibilities, NEPA and other environmental laws.<sup>17</sup> In 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21), which made the program permanent, provided the opportunity for its use to all states and expanded the responsibilities that could be assigned and assumed. Application requirements and criteria for participation were recently defined.<sup>18</sup>

### Proposed Changes

The bill creates s. 334.044(34), F.S., authorizing DOT to assume responsibilities of the USDOT with respect to highway projects within the state under NEPA<sup>19</sup> or other actions required under any federal environmental law pertaining to review or approval of any highway project within the state. DOT may assume responsibilities under 23 U.S.C. s. 327;<sup>20</sup> and enter into one or more agreements, including memoranda of understanding with the United States Secretary of Transportation related to the federal surface transportation project delivery program for transportation projects as provided by 23 U.S.C. s. 327. DOT may adopt rules to implement this section and may adopt relevant federal environmental standards as the standards for the state for a program described above.

The bill would allow Florida to assume greater responsibility for the fate of its own projects by giving the DOT direct NEPA decision making authority. By assuming FHWA's role in the review and approval of transportation projects, DOT anticipates achieving both time and cost savings in project delivery. These benefits are due in part to eliminating one layer of governmental review, allowing direct consultation between DOT and federal regulatory agencies and maximizing efficiency by consolidating all NEPA reviews under DOT. According to DOT, NEPA assignment will result in more timely delivery of transportation projects to Florida's citizens and enhancement of the infrastructure needed to support Florida's economic competitiveness.<sup>21</sup>

A limited waiver of sovereign immunity to civil suit in federal court is required before a state may assume the FHWA's NEPA responsibilities. The waiver of sovereign immunity is limited to only those actions delegated to the DOT and related to carrying out its NEPA duties on state highway projects. NEPA review is governed by the federal Administrative Procedures Act. The standard for review is whether the DOT's action is arbitrary and capricious. The remedy for a successful challenge is to require additional review, analysis, and documentation to support the project. Monetary damages are not permitted. Further, a state assuming the NEPA responsibilities may use federally apportioned surface transportation funds for attorneys' fees directly attributable to eligible activities associated with a project.<sup>22</sup>

### **Public-Private Partnerships (Section 6)**

#### Current Situation

Section 334.30, F.S., authorizes DOT to advance projects which are programmed in the adopted 5 year Work Program that increase transportation capacity and projects greater than \$500 million in the 10-year Strategic Intermodal Plan using funds provided by public-private partnerships (P3) or private entities. These partnerships allow DOT to advance a project utilizing private financing and to reimburse those funds in the fiscal year in which the project is programmed in the Work Program. No more than 15 percent of total federal and state funding in any given year for the State Transportation Trust Fund may be obligated for public private partnership projects.

Inclusion of a project on DOT's 5-year Work Program indicates Legislative approval for the DOT to receive and solicit proposals to enter into agreements with private entities for the building, operation, ownership or financing of transportation facilities.

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<sup>17</sup> 23 U.S.C. s. 327

<sup>18</sup> These requirements were defined in the updated 23 C.F.R. s. 773.

<sup>19</sup> 42 U.S.C. s. 4321 et. seq.

<sup>20</sup> 23 U.S.C. s. 327 relates to the surface transportation project delivery program.

<sup>21</sup> See Florida Department of Transportation, *NEPA Analysis*, July 2015. Copy on file with Transportation & Ports Subcommittee Staff.

<sup>22</sup> 23 USC s. 327(a)(2)(G)

The Division of Bond Finance of the State Board of Administration is responsible for issuing bonds and advising on debt management policies for the state. The Division also provides technical assistance on new financing programs and legislative proposals, administers the volume cap allocation for private activity bonds, and provides an arbitrage compliance program for State bond issues.

### Proposed Changes

The bill amends s. 334.30, F.S., providing that DOT must provide information to, and consult with, the Division of Bond Finance of the State Board of Administration in connection with public-private partnership project proposals to finance or refinance a transportation facility. The bill authorizes the Division of Bond Finance to make an independent recommendation to the Office of the Governor.

## **Business Development Program (Section 7)**

### Current Situation

Section 337.025, F.S., authorizes DOT to establish a program for innovative highway projects. The program fosters innovative strategies in highway construction, maintenance, and finance and bidding in order to limit time and cost increases on construction projects. Innovative techniques are exempt from provisions of law that would otherwise prevent their use, and DOT may not enter into more than \$120 million in contracts under this program each year.<sup>23</sup>

In response to the rising cost of bids and limited competition between majority prime contractors and consultants between 2004 and 2006, DOT implemented a Business Development Initiative pilot project (Initiative). The Initiative is designed to cultivate small businesses to have the ability to bid as prime firms. The Initiative was designed to support the DOT's efforts to increase competition, lower prices, and increase support to meet its contracting needs over the next 10 years. Another goal of the Initiative was to provide more opportunities and support for small businesses wishing to move from subcontracting and sub-consulting to prime contracting and consulting roles.

The initial phase of the Initiative was implemented in fiscal years 2006-07 and 2007-08, with the first six months using DOT District Two as the pilot, followed by the remaining districts in January 2007. DOT conducted a series of focus group sessions in each district to discuss the initiative and various contracting barriers small businesses have when competing on DOT contracts. DOT also sent a survey to small businesses throughout the state, and more than half of the respondents found DOT's goal to be consistent their vision of becoming a prime firm. As a result, DOT implemented a number of strategies to increase competition for highway projects, including:

- Reserve construction, maintenance, and professional services contracts under \$1,000,000 for small businesses and offer assistance to firms with little or no experience of working with DOT as a prime.
- Waive bonding requirements for non-critical projects and/or reduce bid bond amount.
- Provide additional/preference points on professional services contracts and design build contracts for primes who contract with small businesses.
- Revise liability insurance requirements.
- Reduce cost of Construction Training Qualification Program courses for small businesses.

In March 2009, DOT received approval from Federal Highway Administration (FHWA) to apply the Business Development Initiative strategies to federally funded projects. The program was the first of its kind to be approved by the US DOT.

The total value of innovative contracts for Fiscal Year 2016 is \$113,777,507, according to DOT, of which the Initiative accounts for \$24,320,195.

### Proposed Changes

The bill creates s. 337.027, F.S., providing DOT with authorization to establish a program that would assist small businesses and increase competition for highway projects in the DOT Work Program. The

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<sup>23</sup> S. 337.025, F.S.

bill would allow DOT to create a Business Development Program separate from of the current authorization for the Initiative pursuant to s. 337.025, F.S. The bill allows DOT to set aside contracts, provide preferential points and special assistance, waive certain bond requirements, and implement other strategies.

The bill defines a qualifying small business as a business with average gross receipts under \$15 million for road and bridge contracts and under \$6.5 million for professional and non-professional services contracts.

The bill authorizes DOT to adopt rules for the implementation of a business development program.

### **Obsolete Facilities for Toll Revenue (Section 8)**

#### **Current Situation**

Current law authorizes DOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects within the county or counties in which the project is located and contained in DOT's adopted Work Program.<sup>24</sup>

The Navarre Bridge is county owned and is no longer used for toll revenue. The Beeline-East Expressway (re-named the Beachline East Expressway) is now part of the Turnpike Enterprise<sup>25</sup> and toll revenues can be used to secure turnpike debt.

#### **Proposed Changes**

The bill amends s. 338.165(4), F.S., removing the Beeline-East Expressway and the Navarre Bridge from the list of facilities from which DOT may use toll revenues for certain purposes.

### **Dormant Toll Accounts (Section 9)**

#### **Current Situation**

SunPass is the Florida's electronic, prepaid tolls program. It is accepted on all Florida toll roads and nearly all toll bridges. SunPass customers always pay the lowest toll rates available and pay 25 cents less than TOLL-BY-PLATE customers at every exit and location where Turnpike all-electronic, no-cash tolling is in place.

SunPass uses electronic transponders attached to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's account.<sup>26</sup>

Current law provides that any prepaid toll account that has remained inactive for three years shall be presumed unclaimed and handled by the Department of Financial Services in accordance laws relating to the disposition of unclaimed property<sup>27</sup> and that DOT shall close the prepaid toll account.<sup>28</sup>

According to DOT, there are approximately 250,000 SunPass accounts and 35,000 Toll-by-Plate accounts that have not had any activity since January 1, 2012.<sup>29</sup>

#### **Proposed Changes**

The bill amends s. 338.231(3)(c), F.S., increasing the length of time, from 3 years to 10 years, that a toll account must remain dormant before it is presumed unclaimed.

### **DOT Financing Corporation (Section 10)**

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<sup>24</sup> S. 338.165(4), F.S.

<sup>25</sup> Ch. 2012-128, F.S.

<sup>26</sup> <http://www.floridasturnpike.com/all-electronic tolling/SunPass.cfm> (Last visited January 22, 2015).

<sup>27</sup> Ch. 717, F.S.

<sup>28</sup> S. 338.231(3)(c), F.S.

<sup>29</sup> DOT e-mail response to staff questions, February 3, 2015. Copy on file with Transportation & Ports Subcommittee Staff.

### Current Situation

The Florida Constitution and current law authorize DOT to issue debt for the purpose of financing the cost of specific types of transportation projects, including:

- Right of Way Acquisition and Bridge Construction Bonds to fund the acquisition of right of way for roads and the costs of bridge construction projects, authorized by Section 17, Article VII of the Florida Constitution and s. 215.605, F.S.;
- Revenue bonds payable from toll revenues of Florida's Turnpike System, and from the revenues of other Department owned toll facilities, authorized by Section 11, Article VII of the Florida Constitution and s. 338.227 and s. 338.165, F.S.;
- Federal highway apportionment grant anticipation revenue vehicle (GAARVEE) bonds, authorized by s. 215.616, F.S.; and
- Revenue bonds to finance fixed guideway projects, authorized by s. 215.615, F.S.

Article VII, Section 11 of the Florida Constitution otherwise requires approval by vote of the electors for state bonds that would pledge the full faith and credit of the state to finance or refinance the cost of state fixed capital outlay projects authorized by law. Other than the limited authority for right of way acquisition and bridge construction bonds, DOT has no broad authority to pledge future State Transportation Trust Fund monies, a full faith and credit pledge, to support the issuance of debt to finance the acquisition or construction of transportation facilities.

Section 339, F.S., authorizes DOT to contractually commit future State Transportation Trust Fund revenues over its 5 year Work Program.

Section 334.30, F.S., authorizes DOT to enter into public-private partnership agreements, which are long term contractual obligations to finance the costs of acquisition and construction of transportation facilities by private entities.

### Proposed Changes

The bill creates the Florida Department of Transportation Financing Corporation (Corporation), a conduit issuer of indebtedness that would be secured by amounts payable to the Corporation by the DOT under one or more contracts.

The Corporation would be a state governmental entity, governed by a board made up of the Director of the Office of Policy and Budget in the Executive Office of the Governor, the Director of the Division of Bond Finance, and the DOT Secretary. The Corporation would have the power to enter into agreements with DOT under which the DOT would remit payments to the Corporation in exchange for financing services from the Corporation. DOT's commitments would be subject to appropriation and would not constitute a general obligation of the State or a pledge of the full faith and credit of the State. The payments from the DOT would effectively constitute revenues in the hands of the Corporation.

The bill allows DOT to leverage the favorable terms available to governmental borrowers in the tax exempt municipal bond market when DOT enters into long term financing agreements and commits future transportation funding for the acquisition and construction of transportation facilities.

The bill would permit the issuance of debt to finance transportation projects for which the DOT currently lacks legal authority to issue bonds. The Corporation would be authorized to issue debt payable from and secured by the contractual commitments of the DOT and provide the proceeds of the debt to the DOT for the purpose of financing identified transportation projects. The Corporation would be acting as a "conduit issuer" and would not be generally liable for repayment of the debt. Because the debt would only be secured by the DOT contractual commitment to pay under its contract with the Corporation, which obligation remains subject to annual appropriation, the debt would not be secured by the full faith and credit of the State. This provides a constitutionally permissible mechanism by which the DOT could leverage future State Transportation Trust Fund revenues to provide funding for currently needed projects.



## **Work Program (Section 11)**

### **Current Situation**

Each year, DOT develops and submits to the Legislature a Work Program, which consists of transportation projects it intends to undertake in the next five years. As part of the annual General Appropriations Act, the Legislature approves DOT's Work Program. DOT has the statutory authority to amend its Work Program.<sup>30</sup>

Current law permits amending the adopted Work Program, but Work Program amendments are only required to come before the Legislative Budget Commission (LBC) if budget authority is moved between appropriations categories.<sup>31</sup> However, historically, there has been sufficient budget authority within each appropriations category to negate the need for a LBC amendment. Therefore, most amendments to the Work Program must only be placed on consultation for 14 days, and become effective automatically unless the House of Representatives or the Senate objects to an amendment

Current law provides that any Work Program amendment requiring the transfer of fixed capital outlay appropriations between categories within DOT or the increase of an appropriation category is subject to the approval of the LBC. However, if a meeting of the LBC cannot be held within 30 days, then the chair and vice chair of the LBC may authorize the amendment to be approved pursuant to s. 216.177, F.S.<sup>32, 33</sup>

### **Proposed Changes**

The bill amends s. 339.135(7)(g), F.S., removing the authorization for the chair and vice chair of the LBC to approve an amendment to the Work Program if a LBC meeting cannot be held within 30 days.

The bill creates s. 339.135(7)(h), F.S., providing that any Work Program amendment which also adds a new project, or project phase, to the adopted Work Program in excess of \$3 million is subject to LBC approval. Any Work Program amendment submitted under s. 339.135(7)(h), F.S. must include, as supplemental information, a list of projects, or project phases, in the current five-year adopted Work Program that are eligible for the funds within the appropriation category being utilized for the proposed amendment. DOT is required to provide a narrative with the rationale for not advancing an existing project or project phase in lieu of the proposed amendment.

### **Effective Date (Section 12)**

The bill has an effective date of July 1, 2016.

## **B. SECTION DIRECTORY:**

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| Section 1 | Amends s. 311.07, F.S., relating to Florida seaport transportation and economic development funding.                                     |
| Section 2 | Amends s. 311.09, F.S., relating to Florida Seaport Transportation and Economic Development Council.                                     |
| Section 3 | Amends s. 316.003, F.S., relating to definitions.  |
| Section 4 | Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review. |
| Section 5 | Amends s. 334.044, F.S., providing DOT powers and duties.  |
| Section 6 | Amends s. 334.30, F.S., relating to public-private transportation facilities.  |

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<sup>30</sup> S. 339.135, F.S.

<sup>31</sup> S. 339.135(7), F.S.

<sup>32</sup> Section 216.177, F.S., relates to Appropriations acts, statement of intent, violation, notice, review and objection procedures.

<sup>33</sup> S. 339.135(7)(g), F.S.

- Section 7 Creates s. 337.027, F.S., providing authority to implement a business development program.
- Section 8 Amends s. 338.165, F.S., relating to the continuation of tolls.
- Section 9 Amends s. 338.231, F.S., relating to turnpike tolls, fixing; pledge of tolls and other revenues.
- Section 10 Creates s. 339.0805, F.S., creating the DOT Financing Corporation.
- Section 11 Amends s. 339.135, F.S., relating to Work Program; legislative budget request; definitions; preparation, adoption, execution, and amendment.
- Section 12 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

##### **Port of Entry**

Currently, if a commercial vehicle operator does not have the necessary permits and credentials upon entering Florida and attempts to purchase them at the first weigh station, they will be cited for not having the necessary credentials. Creating ports of entry and the ability to purchase temporary credentials will limit the penalties and reduce revenues associated with these citations. DOT estimates there will be a \$1.6 million recurring negative fiscal impact to the STTF from allowing commercial motor vehicles to purchase IRP permits at ports of entry.<sup>34</sup>

#### 2. Expenditures:

##### **FSTED Funding**

The bill provides an additional \$10 million per year for FSTED funding. This funding will come from the State Transportation Trust Fund and is a reallocation of funding from within the confines of the Work Program.

##### **Port of Entry**

As a port of entry state, Florida will require infrastructure to accommodate the acceptance and processing of applications for the credentials necessary to satisfy compliance with Florida's laws. However, existing initiatives utilize the same equipment and will require only minor modification to make them compatible with Florida's port of entry policies. It is estimated that equipment costs for all port of entry sites combined will not exceed \$58,000.<sup>35</sup>

##### **NEPA Delegation**

DOT examined NEPA projects that were under review in 2014 and 2015, and calculated that elimination of FHWA coordination during the PD&E phase and the Design phase would have yielded an estimated cost savings of approximately \$74 million over a two year period.<sup>36</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

<sup>34</sup> Florida Department of Transportation response to Transportation & Ports Subcommittee Staff Questions. February 3, 2014.

<sup>35</sup> Florida Department of Transportation, *Florida Port of Entry Feasibility Study*, September 2014, at 27, available at [http://www.dot.state.fl.us/trafficoperations/Traf\\_Incident/Projects\\_CVO/Presentation/FL%20POE%20Technical%20Study%20Final.pdf](http://www.dot.state.fl.us/trafficoperations/Traf_Incident/Projects_CVO/Presentation/FL%20POE%20Technical%20Study%20Final.pdf) (last accessed Nov. 18, 2015).

<sup>36</sup> Florida Department of Transportation, *NEPA Time Costs brief*, October 2015. Copy on file with Transportation & Ports Subcommittee Staff.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**FSTED Funding**

The additional \$10 million in FSTED funding will assist seaports with various projects. Projects planned for various ports include dredging, berth rehabilitation, and the expansion of facilities. These projects will help increase the competitiveness of Florida's seaports.

**Port of Entry**

Commercial motor vehicle operators may see a reduction in their costs due to the ability to obtain permits at the state's ports-of-entry and avoiding fines by not having the proper permits when entering the state. Commercial motor vehicle operations may also save time with the ability to purchase permits at ports-of-entry.

**Dormant Toll Accounts**

Individuals are less likely to have their prepaid tolls revert to unclaimed property with increasing the length of time the account is dormant from three years to 10 years.

**Business Development Program**

This program should have a positive impact on small businesses by reducing barriers to entry for smaller firms competing for DOT contracts.

D. FISCAL COMMENTS:

Giving DOT direct NEPA decision making authority may result in more efficient project delivery and reduced project costs. While cost reductions will be project specific, DOT estimates that FHWA coordination adds on average a cost increase of 25%, or approximately \$44 million, over a two-year period (2014 and 2015) in the PD&E phase alone.<sup>37</sup> An estimate of additional project costs in the Design phase, based on an average 2.5% cost increase due to FHWA coordination, yields an estimated savings of approximately \$30 million over a two-year period (2014 and 2015).<sup>38</sup> DOT also indicates that it will not require any additional positions as a result of NEPA delegation.<sup>39</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

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<sup>37</sup> Florida Department of Transportation, *NEPA Time Costs brief*, October 2015. Copy on file with Transportation & Ports Subcommittee Staff.

<sup>38</sup> *Id.*

<sup>39</sup> Conversation between Transportation & Ports Subcommittee Staff and DOT staff.

**B. RULE-MAKING AUTHORITY:**

DOT's rules regarding commercial motor vehicle permits may need to be amended if Florida becomes a port of entry state as proposed in the bill.

The bill authorizes DOT to adopt rules implementing its responsibilities under NEPA.

The bill authorizes DOT to adopt rules to implement the Business Development Program.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**